

HONORABLE RONALD B. LEIGHTON

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON
AT TACOMA

Cabela's Retail, Inc.,

Plaintiff,

v.

Hawks Prairie Investment, LLC,

Defendant.

CASE NO. 3:11-cv-05973-RBL

ORDER

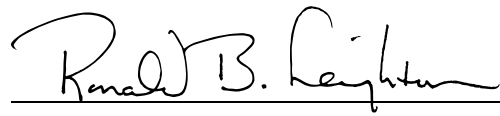
[DKT. # 58]

THIS MATTER is before the Court on Plaintiff's Motion to Substitute Plaintiff (Dkt. # 58). Cabela's Retail, Inc. and Hawks Prairie Investment, LLC contracted on November 6, 2007. Def.'s Resp. at 1. (Dkt. # 60). Cabela's Retail agreed to open a retail store on commercial property owned by Hawks Prairie Investment. *Id.* On June 1, 2008, Cabela's Retail, Inc. merged into Cabela's Wholesale, Inc. Pl.'s Mot. to Sub. at 1. Cabela's Wholesale is the surviving corporation of the merger and is the existing corporate entity responsible for operating the retail stores, including the one at issue here. *Id.* Cabela's Retail now moves pursuant to Fed. R. Civ. P. 17(a)(3) to substitute Cabela's Wholesale as the named plaintiff. Hawks Prairie Investment opposes substitution because the contract at issue was with Cabela's Retail.

Fed. R. Civ. P. 17(a)(3) allows substitution of the real party in interest and for the action to proceed as if it had been originally commenced by the real party in interest. Here, Cabela's

1 Wholesale is the surviving entity and therefore the real party in interest. *See DePinto v.*
2 *Provident Sec. Life Ins. Co.*, 323 F.2d 826, 832 (1963). Substituting Cabela's Wholesale has no
3 affect on the factual allegations. Therefore, Plaintiff's Motion is GRANTED and Cabela's
4 Wholesale, Inc. is substituted as Plaintiff.

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6 Dated this 13th day of September, 2012.

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9 Ronald B. Leighton
10 United States District Judge
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